IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MAHER INGELS SHAKOTKO, CHRISTENSEN LLP, Respondents, v. WILLIAM R. ROSE AND JANE DOE ROSE, husband and wife, and their marital community, Appellants.	No. 40362-5-II UNPUBLISHED OPINION

Worswick, A.C.J. — Maher Ingels Shakotko Christentsen LLP (MISC) sued William Rose for unpaid legal fees. The superior court granted summary judgment in favor of MISC. Rose appeals, arguing that he did not agree to be personally liable for the fees. We hold that Rose unambiguously agreed to be personally liable for at least some attorney fees, but that the scope of the fee agreement he signed is ambiguous. We further hold that there are genuine issues of material fact as to which additional fees Rose may be personally liable for, if any. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

FACTS

MISC performed legal services for Rose from January to October of 2006. The first matter that MISC worked on, the Holiday Trust land lease, was memorialized in a letter from MISC attorney Veronica Shakotko to Rose, dated January 24, 2006. The letter indicated that MISC would handle the matter for Rose on a retainer of $2,500. The letter was addressed to Rose at Architectural Business Concepts and Development LLC (ABCD), of which Rose was a member. The letter gives no other indication of whether the matter was undertaken for Rose in his individual capacity or as a representative of ABCD. MISC included a retainer agreement with the letter, but Rose did not sign or return it. MISC performed work on this matter between January and September, addressing its bill to Rose at ABCD.

The second matter that MISC worked on was the attempted purchase of the old Kaiser aluminum plant in Spokane. According to a declaration by Rose, this matter was undertaken on behalf of DARB Organic Energy Conversion Company LLC (DARB), of which Rose was also a member. DARB intended to build a waste-to-energy plant on the site. However, when the parties discovered that the land was worth much more than the original purchase price, the seller refused to perform. Rose retained MISC to attempt to close the transaction for DARB. MISC ended up representing DARB in litigation against the seller, but DARB did not prevail. MISC performed work on this matter between March and October, addressing its bill to Rose personally, without reference to any business entity.

In June of 2006, Rose asked MISC to set up another company, DARB II, to attempt to bring in a partner and negotiate a deal to purchase a part interest in the Kaiser land. According to

a declaration by Rose, he agreed to be personally liable for the fees incurred in setting up DARB II, but not for fees related to work performed on DARB II's behalf.

In July 2006, MISC worked on a personal matter for Rose, involving a dispute with the Titus Will company. In e-mails in the record, Rose explicitly refers to the matter as personal. The record shows that MISC billed Rose for time spent on this matter.

On February 21, 2008, MISC filed suit against Rose for payment of its outstanding fees on all of these matters. MISC alleged breach of contract, unjust enrichment, and promissory estoppel.[1] MISC later moved for summary judgment.

The only complete fee agreement in the record is signed by Rose and Shakotko and dated June 1, 2006, several months after MISC began legal work for Rose, DARB and ABCD. The scope of work described in the agreement is simply, "all things necessary to prosecute or defend the claim or claims on your behalf." Clerk's Papers (CP) at 6.

In a declaration, Shakotko asserted that she discussed personal liability with Rose. She asserted that Rose signed the fee agreement agreeing to be personally liable for all matters that MISC worked on, whether on behalf of Rose or his business entities. Rose responded by declaration, claiming that he was given only the signature page of this fee agreement and did not see the other pages until MISC filed its lawsuit against him. Also by declaration, Rose denied discussing personal liability with Shakotko and asserted that he never agreed to be personally liable for the attorney fees of ABCD or DARB, or for any fees "incurred beyond the formation of

[1] In its brief, MISC argues only breach of contract. Because MISC does not argue unjust enrichment or promissory estoppel on appeal, we do not address these issues. *State v. Corbett*, 158 Wn. App. 576, 586, 242 P.3d 52 (2010) (citing RAP 10.3(a)(6)).

DARB II." CP at 159, 172.

In support of summary judgment, MISC submitted correspondences with Rose regarding MISC's fees. In an e-mail dated October 4, 2006, Rose stated, "I will pay you" in response to Shakotko's demand for payment. CP at 11. Rose also asserted that another party might be liable for the debt. Rose further thanked Shakotko for her efforts "on behalf of DARB and its members." CP at 11.

In an e-mail dated October 23, 2006, Rose stated that he hoped to pay MISC with the proceeds from another project. He further stated, "I look forward to paying off my debt." CP at 12.

MISC also submitted letters from MISC to Rose dating from 2007 that asserted Rose owed $61,383.42, with interest continuing to accrue. The record does not contain any responses to these letters. Rose did not acknowledge the amount owed in any of his correspondences on the record.

The superior court granted summary judgment for MISC without explanation. Rose appeals.

ANALYSIS

I. Standard of Review

We review a grant of summary judgment de novo. *Briggs v. Nova Servs.*, 166 Wn.2d 794, 801, 213 P.3d 910 (2009). Summary judgment is appropriate where, viewing all facts and resulting inferences most favorably to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Briggs*, 166 Wn.2d at 801;

CR 56(c). "A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation." *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

II. Contract Interpretation

Rose asserts that he never signed any agreement agreeing to be personally liable for attorney fees incurred on behalf of his business entities. He argues that the fee agreement is ambiguous on this point. MISC argues that the fee agreement unambiguously makes Rose liable for all fees relating to every matter at issue in this case, and that the extrinsic evidence leads to the same conclusion. We hold that Rose is personally liable for at least some fees, but that there is a genuine issue of material fact as to which additional fees he may be personally liable for.

The touchstone of contract interpretation is the parties' intent. *Durand v. HIMC Corp.*, 151 Wn. App. 818, 829, 214 P.3d 189 (2009), *review denied*, 168 Wn.2d 1020, 231 P.3d 164 (2010) (quoting *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996)). Washington courts follow the objective manifestation theory of contracts, imputing an intention corresponding to the reasonable meaning to the words used. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). The parties' subjective intent is "generally irrelevant if the intent can be determined from the actual words used." *Hearst Commc'ns*, 154 Wn.2d at 504.

"Contract interpretation is a question of law only when '(1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic evidence.'" *Dice v. City of Montesano*, 131 Wn. App. 675, 684, 128 P.3d 1253

(2006) (quoting *Tanner Elec. Coop.*, 128 Wn.2d at 674). "A contract is ambiguous if its terms are uncertain or they are subject to more than one meaning." *Dice*, 131 Wn. App. at 684. Contract terms are not ambiguous simply because parties suggest opposing meanings. *Dice*, 131 Wn. App. at 684.

Extrinsic evidence may be considered to determine the meaning of the words used, but not to show an intention independent of the instrument or to vary, contradict, or modify the words used. *Hearst Commc'ns*, 154 Wn.2d at 503. Extrinsic evidence of the parties' intent includes "(1) the subject matter and objective of the contract, (2) all the circumstances surrounding the making of the contract, (3) the subsequent acts and conduct of the parties, and (4) the reasonableness of respective interpretations urged by the parties." *Hearst Commc'ns*, 154 Wn.2d at 502. Extrinsic evidence may be used to show the parties' intent regardless of whether the contract terms are ambiguous. *Brogan & Anensen, LLC v. Lamphiear*, 165 Wn.2d 773, 775, 202 P.3d 960 (2009).

Looking first to the words of the fee agreement to discern the parties' intent, we note that the fee agreement does not specify the scope of services to be performed. The agreement identifies the scope of representation only as "all things necessary to prosecute or defend the claim or claims on your behalf." CP at 6. The fee agreement is also silent as to whether it applies to fees incurred before the signing date. Rose's signature on the document unambiguously identifies him as the client who agrees to pay MISC's fees, but does not assist us in determining exactly which fees he is agreeing to pay. The contract is therefore ambiguous not as to Rose's personal liability, but as to the *scope* of his personal liability.

As noted, we may look to extrinsic evidence to discern the parties' intent, provided that intent is consistent with the words of the contract. *Brogan & Anensen*, 165 Wn.2d at 775. And the extrinsic evidence here conflicts as to what Rose agreed to be liable for.

Shakotko asserted in her declaration that Rose orally agreed to be personally liable for all of MISC's services. However, Rose denied that he discussed personal liability with Shakotko and denied that he agreed to be personally liable for fees incurred on behalf of ABCD, DARB, or "beyond the formation of DARB II." CP at 159. Furthermore, while the e-mails show that Rose acknowledged that he owed a debt to MISC, they do not clarify which matters he acknowledged liability for.

While the extrinsic evidence shows that the parties intended Rose to be liable for at least some of MISC's fees, the evidence conflicts as to whether the parties agreed for Rose to be liable for all of MISC's fees. Because this conflicting evidence raises a genuine issue of material fact as to the fees for which Rose is liable, we reverse the superior court's grant of summary judgment.

III. Account Stated Doctrine

MISC contends that under the account stated doctrine, Rose is precluded from disputing not only the amount owed, but also his personal liability for said amount. We disagree.

The account stated doctrine applies when both a debtor and a creditor manifest assent that a stated sum is an accurate computation of the amount due to the creditor. *Associated Petroleum Prods., Inc. v. Northwest Cascade, Inc.*, 149 Wn. App. 429, 435, 203 P.3d 1077 (2009) (quoting *Sunnyside Valley Irrigation Dist. v. Roza Irrigation Dist.*, 124 Wn.2d 312, 315, 877 P.2d 1283 (1994)). Courts look to all the circumstances and acts of the parties to determine whether there is

evidence of assent. *Discover Bank v. Bridges*, 154 Wn. App. 722, 728 n.4, 226 P.3d 191 (2010).

Here, there is no evidence of assent to the amount owed. In Rose's e-mails, he acknowledged that he owed MISC a debt, but did not acknowledge the amount. Although MISC sent letters informing Rose how much he owed, the record does not include any response from Rose acknowledging any specific amount of indebtedness. Therefore, MISC has not shown that the account stated doctrine applies.

Moreover, there is no authority for MISC's argument that the account stated doctrine could preclude Rose from disputing who owes the debt. If Rose *had* assented to an amount owed, but had done so on behalf of a business entity, the account stated doctrine would not preclude him from disputing his personal liability. MISC was not entitled to summary judgment under the account stated doctrine.

IV. Findings of Fact

Rose finally assigns error to the superior court's failure to issue findings of fact and conclusions of law supporting its order granting summary judgment. But as set forth above, our review on summary judgment is de novo. Findings of fact and conclusions of law are superfluous to our review and are not considered on appeal. *Sherman v. Kissinger*, 146 Wn. App. 855, 864 n.4, 195 P.3d 539 (2008). The superior court's failure to issue findings of fact and conclusions of law was not error and this claim fails.

ATTORNEY FEES

MISC requests attorney fees on appeal. Because we reverse the superior court's order granting summary judgment to MISC, we deny MISC's request for attorney fees.

Reversed and remanded for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

Hunt, J.